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No. 96-1696

In The

Supreme Court of the United States

October Term, 1996

LINDA DAGI,

Petitioner,

vs.

CHRIS MOTORS CORPORATION, BAYERISCHE MOTOREN WERKE, A.G. and BMW OF NORTH AMERICA, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENT CHRIS MOTORS CORPORATION

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STATEMENT OF THE CASE

Respondent respectfully opposes the petition for writ of certiorari because the petition raises no unsettled question of federal law. Indeed, as the petition itself reflects, the sole substantive question of federal law identified pertains to federal removal jurisdiction. This particular issue, contrary to petitioner's contention, has been firmly settled by prior Supreme Court precedent, which was appropriately followed by the courts below.

In an effort to embellish her federal jurisdiction argument, petitioner misleads the Court by omitting and carefully avoiding any reference to her third amended complaint, which is the amended pleading that first triggered federal jurisdiction. Because the petitioner's statement is thus incomplete and misleading, respondent below summarizes the full case history and, thereafter, underscores the principal factual deceptions employed by petitioner in seeking to deceive the Court into reviewing a case that raises no meaningful federal question of law.

A. Course of Proceedings and Disposition Below

Petitioner first filed this action in the State Court of Fulton County, Georgia on March 19, 1993 as the result of a minor automobile accident in which petitioner drove her BMW automobile into the rear of another vehicle during rush hour traffic. In the suit petitioner sought to recover property and punitive damages from the manufacturer, distributor, and retailer of a BMW automobile.

The complaint, as initially filed, asserted state law tort claims exclusively. (App. to Petition 92a-100a). First, because petitioner was admittedly uninjured in her accident, she sought

to recover for property damage sustained by her BMW automobile under Georgia state law theories of negligence and product liability. (*Id.* at 95a-97a). She additionally sought damages under a state common law fraud theory, which was predicated upon her belief that the vehicle's mileage was misrepresented prior to her purchase of the car. (*Id.* at 97a-100a). All theories of recovery set forth in the initial complaint are cast beneath conspicuous and plainly worded state law headings, and the entire complaint avoids any reference to federal law. (*Id.* at 92a-100a).

Petitioner subsequently filed a series of amended complaints, which culminated in the filing of a third amended complaint for damages on July 18, 1994. (A copy of the Third Amended Complaint for Damages is attached hereto as Appendix A). In this amended complaint, petitioner, for the first time in the litigation, asserted a cause of action under the federal Motor Vehicle Cost Savings and Information Act, 49 U.S.C. § 32710 *et seq.* (*Id.* at 13a).

By virtue of this newly-added federal cause of action, a basis for federal jurisdiction was first created. In response, the respondents, pursuant to 28 U.S.C. § 1446(b), removed the action to United States District Court on August 12, 1994, within thirty days of service of the third amended complaint. (App. to Petition 103a). In a motion to remand, petitioner contended that the removal was untimely because the original complaint set forth general allegations from which a federal cause of action could have been based. (R3-5). However, because no federal cause of action was in fact pursued by petitioner until the filing of her third amended complaint, the district court denied the motion on October 24, 1994. (App. to Petition 25a).

Following the close of formal discovery, the respondents separately moved for summary judgment on a variety of legal

grounds. The district court granted the motions in two thorough and comprehensive orders dated July 31, 1995 and November 30, 1995. (Copies of both orders included in petitioner's appendix at 26a and 91a). Both rulings were affirmed by the Eleventh Circuit Court of Appeals. (App. to Petition 13a).

Petitioner now seeks United States Supreme Court review of her automobile property damage and fraud action.

B. Correction of Misstatements in the Petition

The underlying facts of the case are set forth in detail in the district court order on respondent Chris Motors Corporation's motion for summary judgment, a copy of which is contained in the appendix to the petition at 26a. In the interest of brevity, respondent adopts and incorporates this fact statement fully herein.

In addition, pursuant to United States Supreme Court Rule 15.1, respondent emphasizes to the Court a central misrepresentation that runs throughout the petition for writ of certiorari. Specifically, in her brief petitioner deliberately omits any reference to her third amended complaint, which, as explained above, first set forth the basis for federal jurisdiction. In her statement of the case, petitioner merely explains that the action was removed by the respondents sixteen months into the litigation and, by avoiding reference to the third amended complaint, suggests that there was no precipitating basis for the removal at that time. (Petition at 10).

As remarked above, and as will be further discussed below, the action was not removable until the federal cause of action was first asserted in the third amended complaint. Respondent takes strong exception to petitioner's attempt to deceive the Court on this issue by failing to acknowledge the effect, or even the

existence, of her third amended complaint. Respondent respectfully submits that this clarification will enable the Court to make properly short work of the jurisdiction issue.

REASONS FOR DENYING THE WRIT

Of the five issues raised in the petition, only the first, which challenges the existence of federal jurisdiction, raises a genuine, though certainly not new, issue of federal law. Accordingly, respondent devotes the bulk of this response to demonstrating that this issue has been firmly settled by earlier precedents of this Court. Thereafter, respondent addresses briefly the remaining issues raised.

I.

THE FEDERAL JURISDICTION ISSUE RAISED BY PETITIONER IS GOVERNED BY PRIOR PRECEDENT OF THIS COURT, WHICH WAS CORRECTLY APPLIED BY THE COURTS BELOW.

Petitioner's lead argument that certiorari should be granted in order to reverse the denial of petitioner's motion to remand is without merit because the position advocated has been flatly rejected by prior precedent of this Court. Petitioner's position that removal was untimely is premised on her contention that federal question jurisdiction existed at the time the initial complaint was filed because the allegations of the fraud count could also have supported an alternative claim under the Motor Vehicle Cost Savings and Information Act. 49 U.S.C. § 32710 *et seq.* The Supreme Court's prior precedents discussed below make plain that this position is devoid of merit.

In uniform jurisprudence spanning nearly a full century, this Court has mandated that federal question jurisdiction exists

only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). *See also Louisville & Nashville Railroad v. Mottley*, 211 U.S. 149 (1908). Known as the well-pleaded complaint rule, the doctrine makes a plaintiff the master of the complaint, *Lister v. Starke*, 890 F.2d 941, 943 (7th Cir. 1989), *cert. denied*, 498 U.S. 1011 (1990), and empowers plaintiffs to "avoid jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392. From these and other Supreme Court precedents it has become settled law that "[j]urisdiction may not be sustained on a theory that the Plaintiff has not advanced." *Merrell Dowell Pharmaceutical, Inc. v. Thompson*, 478 U.S. 804, 809, n. 6 (1986).

There are only two exceptions to the well-pleaded complaint rule, neither of which arise in this case. First, where the plaintiff relies upon state law that is completely preempted by federal law, federal jurisdiction nonetheless exists. *See, e.g., Avco Corp. v. Machinists*, 390 U.S. 557 (1968). Second, a plaintiff may not avoid federal jurisdiction by deliberately omitting to plead a necessary federal question in the complaint. *Franchise Tax Board v. Laborers Vacation Trust*, 463 U.S. 1 (1983).

Under the foregoing authority, federal question jurisdiction did not exist under the initial complaint, and the case was not removable until the federal claim first appeared in the third amended complaint. As the initial complaint reflects, petitioner carefully avoided any reference to federal law. (App. to Petition 92a-100a). Indeed, the initial complaint specifically enumerated with conspicuous headings the particular state law theories under which recovery was sought. (*Id.*) Consequently, under the well-pleaded complaint rule, the respondents were initially powerless to remove the case to federal court. Furthermore, neither exception to the well-pleaded complaint rule applied. The pertinent federal act itself provides that it shall not preempt state

law, 49 U.S.C. § 32711, and the federal law is not an essential ingredient to any of the initially pleaded state law claims. For all of these reasons, the initial complaint was not removable, and the district court properly denied the motion to remand.

Despite the extensive Supreme Court authority set forth above, petitioner continues to insist that the respondents should have removed the case upon the filing of the initial complaint because it was apparent from her fraud allegations that a federal action *could* have been asserted as well. As demonstrated above, the lack of merit to this position has previously been established by this Court, and numerous district court opinions following the rule only further confirm the level of judicial certainty on this issue. *See, e.g., Matthews v. Anderson*, 826 F. Supp. 479 (M.D. Ga. 1993); *Barraclough v. ADP Automotive Claims Services*, 818 F. Supp. 1310 (N.D. Cal. 1993); *Woolridge v. Redman Homes, Inc.*, 792 F. Supp. 1469 (N.D. Tex. 1991). *See also Chronologic Simulation, Inc. v. Sanguinetti*, 892 F. Supp. 318 (D. Mass. 1995); *Crawford v. Mokhtari*, 842 F. Supp. 840 (D. Md. 1994), *aff'd*, 30 F.3d 129 (4th Cir. 1994); *Moak v. Illinois Central Railroad Co.*, 807 F. Supp. 34 (M.D. La. 1992); *Cedillo v. Valcar Enterprises*, 773 F. Supp. 932 (N.D. Tex. 1991).

As was the case in each of the above cases, the mere fact that petitioner *could have* pursued a federal claim at the time of her initial complaint does not suggest that the defendants could then have removed the action. To the contrary, since petitioner presented only state claims in the initial complaint, the case was not removable until the federal claim was added.

In contrast to the applicable authority set forth above, petitioner cites the Court to distinguishable and dated district court cases having no relevance to the issue raised. For instance, petitioner cites *Gable v. Local Union #387 Int'l Ass'n*, 695 F. Supp. 1174 (N.D. Ga. 1988) and *Golke v. Lee Lumber & Building*

Materials Corp., 671 F. Supp. 568 (N.D. Ill. 1987). These cases concern state law claims preempted by the Labor Management Relations Act. As such, both fall within the preemption exception to the well-pleaded complaint rule. As remarked above, the instant case does not involve federal preemption, and the pertinent federal legislation expressly so holds. 49 U.S.C. § 32711. Consequently, neither case alters the relevant analysis. Similar substantive distinctions apply to the more dated district court opinions cited by petitioner.

In short, under the extensive federal authority set forth above, the motion to remand was properly denied. The clarity of the controlling rule and the consistency of its case law make further review of this argument unnecessary. Respondent respectfully submits that this Court need not devote its valuable resources toward revisiting this previously settled rule of law.

II.

ALL REMAINING REASONS ENUMERATED IN THE PETITION ARE INAPPROPRIATE FOR REVIEW BY THIS COURT.

The remaining four grounds articulated by petitioner as purported support for a writ of certiorari are simply unworthy of serious consideration by this Court. In the remaining grounds petitioner asks the Court to review record evidence and to review the Eleventh Circuit Court of Appeals's denial of oral argument in reviewing the initial appeal. Respondent respectfully submits that these issues are simply inappropriate for Supreme Court review for several reasons.

First, with respect to petitioner's suggestion that this Court review the evidentiary record to determine if summary judgments were proper granted, the Court has long recognized its refusal

to review evidence or to discuss specific facts. *United States v. Johnston*, 268 U.S. 220, 227 (1925). Certainly the instant case, which features a claim for property damage resulting from a rear-end automobile collision caused by the petitioner herself, does not merit departure from this general principle. Furthermore, the summary judgment rulings below almost exclusively address Georgia substantive law issues. This Court traditionally eschews review of state law rulings and limits its jurisdiction "to the correction of errors relating solely to federal law." *Murdock v. City of Memphis*, 87 U.S. 590 (1875). A review of the petitioner's negligence, fraud, and product liability claims would, again, deviate from sound Supreme Court principles and time-honored precedent.

As for the petitioner's suggestion that the Court should grant certiorari for the purpose of reviewing the denial of oral argument in the court below, respondent again submits that this Court's resources are worthy of more weighty substantive matters.

Finally, respondent respectfully submits that the additional issues identified in the petition are of insufficient importance to merit review by this Court. The Supreme Court's Rules specifically state: "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Supreme Court Rule 10. Though petitioner seemingly feels entitled to a further review of factual state law issues, such is plainly not the case. The present case — which arises from a minor traffic accident, which involves no constitutional issue, and which, at best, raises questions regarding the sufficiency of evidence to support a claim — neither commands nor merits Supreme Court review.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A — THIRD AMENDED COMPLAINT FOR DAMAGES DATED JULY 18, 1994

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION

FILE NO. 93-VS-0070409-F

JURY TRIAL DEMANDED

LINDA DAGI,

Plaintiff,

vs.

BAYERISCHE MOTOREN WERKE, A.G., BMW OF NORTH AMERICA, INC. and CHRIS MOTORS CORPORATION,

Defendants.

THIRD AMENDED COMPLAINT FOR DAMAGES

COMES NOW Linda Dagi Plaintiff in the above-styled action and prior to the entry of the Pre-Trial Order in this case and pursuant to the provisions of O.C.G.A. § 9-11-15, hereby files and serves this her Amended Complaint for Damages by showing the Court as follows:

Appendix A

PARTIES

1.

Plaintiff Linda Dagi (hereinafter referred to as "Dagi") is and at all times material to this action, was a resident of the State of Georgia.

2.

Defendant Bayerische Motoren Werke, A.G. (hereinafter referred to as "BMW") is a foreign corporation engaged in the business of manufacturing motor vehicles.

3.

At all times relevant hereto, Defendant BMW transacted business in the State of Georgia.

4.

Defendant BMW may be served through the Hague Convention at its corporate headquarters in Munich, Germany.

5.

Defendant BMW is subject to both the jurisdiction and venue of this Court.

6.

Defendant BMW of North America, Inc. (hereinafter referred to as "BMW of North America") is a foreign corporation engaged in the business of distributing BMW motor vehicles.

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7.

At all times relevant hereto, Defendant BMW of North America transacted business in the State of Georgia.

8.

Defendant BMW of North America may be served through its registered agent, to-wit: CT Corporation System, 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361.

9.

Defendant BMW of North America is subject to both the jurisdiction and venue of this Court.

10.

Defendant Chris Motors Corporation (hereinafter referred to as "Chris Motors") is a Georgia Corporation engaged in the business of the retail sale of BMW and other motor vehicle products.

11.

At all times material hereto Defendant Chris Motors transacted business in the State of Georgia.

12.

Defendant Chris Motors may be served through its registered agent, to-wit: Neal Chrisman, 1606 Church Street, Decatur, DeKalb County, Georgia 30030.

Appendix A

13.

Defendant Chris Motors is subject to both the jurisdiction and venue of this Court.

FACTUAL ALLEGATIONS

14.

On or about May 13, 1992, at approximately 9:05 a.m., Plaintiff was operating a 1991 BMW 535i model automobile in a southerly direction on Briarcliff Road, at or near its intersection with Sheffield Drive, in the City of Atlanta, DeKalb County, Georgia.

15.

At said time and place, James Scott (hereinafter referred to as "Scott") was operating a 1984 Dodge Ram 350 vehicle, also in a southerly direction on Briarcliff Road, in the City of Atlanta, DeKalb County, Georgia.

16.

At said time and place, Plaintiff Dagi was traveling at a safe and reasonable distance behind Scott's vehicle.

17.

At said time and place, Scott was stopped at the intersection of Briarcliff and Sheffield Drive, attempting to make a left hand turn onto Sheffield Drive, when Plaintiff attempted to safely brake her BMW automobile with sufficient distance between

her vehicle and Scott's vehicle to allow her to stop, under the speed and conditions existing at the time, but her vehicle would not decelerate or stop because of defects in the mechanical system in said vehicle, causing her vehicle to violently collide into the rear of Scott's vehicle.

18.

As a direct and proximate result of said collision, caused by the mechanical defects in Plaintiff's BMW automobile, Plaintiff's BMW sustained extensive damage.

19.

On or about April 2, 1992, Plaintiff purchased said 1991 BMW automobile from Defendant Chris Motors.

20.

Defendant Chris Motors represented, attested and certified to Plaintiff via an Odometer Disclosure Statement that there were only 5,391 miles driven on the subject BMW 535i automobile at the time she purchased said vehicle.

21.

The Odometer Disclosure Statement certifying that there were only 5,391 miles on said BMW 535i automobile was signed and executed by E. W. Sweeney, III, the Sales Manager for Defendant Chris Motors.

Appendix A

22.

The VIN number for the subject BMW 535i automobile is WBAHD1315MBF11537.

23.

The purchase price for the subject BMW 535i automobile was approximately $38,022.14.

24.

From the time that Plaintiff purchased the subject BMW 535i automobile until the time of the subject May 13, 1992 incident, Plaintiff did not in any way change, alter or modify the subject BMW automobile.

COUNT I
STRICT LIABILITY
(BMW)

25.

The allegations in Paragraphs 1 through 24 of Plaintiff's Third Amended Complaint are hereby incorporated by reference and made a part hereof as if each such allegation was fully set forth herein.

26.

The subject BMW 535 automobile purchased by Plaintiff Linda Dagi from Defendant Chris Motors was originally designed and manufactured by Defendant BMW in a defective

condition unreasonably dangerous to the users and consumers of same which included Plaintiff Linda Dagi.

27.

The subject BMW 535i automobile was defective at the time it was placed into the stream of commerce by Defendant BMW and sold to the Plaintiff and said BMW automobile was not changed, altered or modified in any way by Plaintiff at the time of the subject May 13, 1992 incident.

28.

The subject BMW 535i automobile was defective at the time of the subject May 13, 1992 incident.

29.

As a direct and proximate result of the defective condition of the subject BMW 535i automobile, Plaintiff was involved in said collision causing her vehicle to sustain extensive damage.

30.

The subject BMW 535i model automobile was also defective in that the odometer of said vehicle could be disengaged by merely pulling the fuse which controls the odometer and instrument cluster.

31.

The defective design of the odometer and fuse circuitry of the subject BMW 535i model automobile precludes purchasers

of said model vehicles (such as Plaintiff Linda Dagi) from accurately knowing and relying upon the automobile's odometer mileage reading.

32.

By reason of the foregoing, Plaintiff Dagi is entitled to recover from Defendant BMW damages in such an amount as may be shown by the evidence and determined by the jury in their enlightened conscience.

COUNT II
STRICT LIABILITY
(BMW OF NORTH AMERICA)

33.

The allegations in Paragraphs 1 through 32 of Plaintiff's Third Amended Complaint are hereby incorporated by reference as made a part hereof as of each such allegation was fully set forth herein.

34.

The subject BMW 535i automobile purchased by Plaintiff from Defendant Chris Motors was originally designed and manufactured by Defendant BMW in a defective condition to the users and consumers of same, which included Plaintiff Dagi.

35.

The subject BMW 535i automobile was defective at the time it was placed into the stream of commerce by Defendant BMW

and sold to the Plaintiff and said BMW automobile was not changed, altered or modified in any way by Plaintiff at the time of the subject May 13, 1992 incident.

36.

The subject BMW 535i automobile was defective at the time of the subject May 13, 1992 incident.

37.

Defendant BMW of North America failed to disclose or otherwise warn Plaintiff Linda A. Dagi of the defects in the subject BMW 535i automobile.

38.

As a direct and proximate result of the defective condition of the subject BMW 535i automobile, Plaintiff was involved in said collision causing her vehicle to sustain extensive damage.

39.

By reason of the foregoing, Plaintiff Dagi is entitled to recover from Defendant BMW damages in such an amount as may be shown by the evidence and determined by the jury in their enlightened conscience.

Appendix A

COUNT III
NEGLIGENCE
(CHRIS MOTORS)

40.

The allegations in Paragraphs 1 – 39 of Plaintiff's Third Amended Complaint are hereby incorporated by reference and made a part hereof, as if each such allegation was fully set forth herein.

41.

Defendant Chris Motors sells BMW products, and specifically, 535i model automobiles throughout the State of Georgia and holds out to the public that said automobiles it sells are safe, are of merchantable quality and are fit for the use and purposes intended.

42.

Defendant Chris Motors' negligence, which constituted the direct and proximate cause of the subject incident described hereinabove, resulting in the damages claimed by Plaintiff, consisted of, among other things:

a) Failing to exercise reasonable care in the inspection and testing of said BMW 535i automobile for mechanical defects;

b) Distributing and selling said BMW 535i vehicle to the public, knowing or should have knowing that said automobile was not reasonably and adequately safe for usage by the public on the roads and highways;

Appendix A

c) Failing to warn purchasers of said automobile, and specifically, Plaintiff Dagi of the automobile's dangerous condition and failing to warn Plaintiff Dagi that said automobile was not reasonably and adequately safe for usage by the public on the roads and highways; and

d) Failing to exercise reasonable care in the maintenance of said BMW 535i automobile.

43.

As a direct and proximate result of Defendant Chris Motors' negligence, Plaintiff was involved in said collision causing her vehicle to sustain extensive damage.

44.

By reason of the foregoing, Plaintiff Dagi is entitled to recover from Defendant Chris Motors damages in such an amount as may be shown by the evidence and determined by the jury in their enlightened conscience.

COUNT IV
FRAUD
(CHRIS MOTORS)

45.

The allegations in Paragraphs 1 – 44 of Plaintiff's Third Amended Complaint are hereby incorporated by reference and made a part hereof, as if each such allegation was fully set forth herein.

Appendix A

46.

Defendant Chris Motors represented and certified to Plaintiff Dagi that the subject BMW 535i automobile had been driven only 5,391 miles via an Odometer Disclosure Statement.

47.

At the time in which Defendant Chris Motors represented and certified to Plaintiff Dagi that the subject BMW 535i automobile had only 5,391 miles through said Odometer Disclosure Statement, Defendant Chris Motors knew that such representation to Plaintiff Dagi as to the mileage of said vehicle was false.

48.

Defendant Chris Motors made such representation regarding the mileage of said BMW 535i vehicle with the intention and purpose of deceiving Plaintiff Dagi.

49.

Plaintiff Dagi reasonably relied upon Defendant Chris Motors' representation and certification as to the mileage of the subject BMW 535i automobile.

50.

As a result of Defendant Chris Motors fraudulent representation with respect to the mileage of the subject BMW 535i automobile, Plaintiff Dagi sustained damages.

51.

By reason of the foregoing, Plaintiff Dagi is entitled to recover from Defendant Chris Motors punitive damages in such an amount as may be shown by the evidence and determined by the jury in their enlightened conscience.

COUNT V
VIOLATION OF THE FEDERAL ODOMETER FRAUD ACT, 15 USC § 1981 – § 1988
(CHRIS MOTORS)

52.

The allegations in Paragraphs 1 - 51 of Plaintiff's Third Amended Complaint are hereby incorporated by reference and made a part hereof, as if each such allegation was fully set forth herein.

53.

Defendant Chris Motors tampered, disconnected, reset or altered or caused to be tampered, disconnected, reset or altered the odometer of the subject 1991 BMW 535i vehicle purchased by Plaintiff Linda Dagi.

54.

Defendant Chris Motors' actions and conduct as alleged hereinabove were in violation of the provisions of the Federal Odometer Fraud Act, 15 USCA § 1981 to 1988.

Appendix A

55.

As a result of Defendant Chris Motors' actions and conduct in violating the provisions of the Federal Odometer Fraud Act, Plaintiff Linda Dagi sustained damages.

56.

By reason of the foregoing, Plaintiff Linda Dagi is entitled to recover from Defendant Chris Motors treble damages, attorney's fees and costs, in such an amount as may be shown by the evidence and determined by the jury in their enlightened conscience.

WHEREFORE, Plaintiff Linda Dagi prays and respectfully demands verdict and judgment as follows:

a) That summons and process issue and that each Defendant be served with a copy of this Complaint as required by law and that each Defendant be required to appear and answer;

b) That Plaintiff be awarded damages from the Defendants, jointly and severally, for the destruction of Plaintiff's BMW 535i automobile, in such an amount as may be shown by the evidence and determined in the enlightened conscience of the jury;

c) That Plaintiff be awarded treble damages, attorney's fees and costs against Defendant Chris Motors, for their violation of the Federal Odometer Fraud Act, in such an amount as may be shown by the evidence and as may be determined in the enlightened conscience of the jury;

d) That Plaintiff be awarded punitive damages against

Defendant Chris Motors, in such an amount as may be shown by the evidence and as may be determined in the enlightened conscience of the jury in order to deter said Defendant from engaging in similar misconduct in the future;

e) That Defendants be charged with all court costs attributable to this action and such other costs reasonably incurred in the prosecution and trial of this case;

f) That Plaintiff be granted a *trial by jury*; and

g) That Plaintiff be granted such other and further relief as may be shown by the evidence and authorized by law.

SMOLAR, ROSEMAN, BRANTLEY
& SEIFTER

s/ Yehuda Smolar
YEHUDA SMOLAR
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s/ James I. Seifter
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Appendix A

CERTIFICATE OF SERVICE

I hereby certify that I have this day served opposing counsel with a copy of the within and foregoing **THIRD AMENDED COMPLAINT FOR DAMAGES** by depositing a copy of same in the United States Mail with sufficient postage thereon to insure delivery, addressed as follows:

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This 18th day of July, 1994.

s/ James I. Seifter
JAMES I. SEIFTER

Attorney for Plaintiff
Linda Dagi